

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

CUSTOM REFERENCE NO.1 OF 2004

Commissioner of Customs Import, Mumbai

Petitioners

vs.

M/s.Vardhaman Acrylic Ltd., Mumbai

Respondents

Mr. A.C. Singh with Ms.S.V. Bharucha i/b. Mr.T.C. Kaushik for the petitioners.

Mr. N. S. Nankani i/b. Mr.N.S. Thakkar for the respondents.

**CORAM : R. M. LODHA &
J. P. DEVADHAR,JJ.**

DATED : 7th September 2004

P.C.

Heard.

2. In the light of the decision of the Larger Bench of the Customs, Excise and Service Tax Appellate Tribunal in the case of Commissioner of Central Excise, Chennai v. Standard Pencil Pvt. Ltd., 2004 (170) E.L.T. 151, the learned counsel for the assessee submits that he is not in a position to defend the order of the Tribunal. He submits that the appeal may be remanded back for consideration of the appeal on merits.

3. In view of the submission made by the learned counsel for the assessee-respondents, we do not deem it necessary to deal with the question of law referred by

the Tribunal for our opinion. As candidly conceded by the counsel for the assessee, we set aside the order dated 23rd January 2002 passed by the Tribunal and restore the appeal no.C/313/01-Mum, Commissioner of Customs, Mumbai (Import) v. Vardhaman Acrylic Ltd. to the file of the Tribunal for fresh hearing and decision on merits treating the review application before the Commissioner (Appeals) under Section 129D of the Customs Act, 1962 within limitation.

4. Reference is disposed of accordingly.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)